

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 07181

CAROLINA OUTREACH, LLC,

Petitioner,

v.

SMOKY MOUNTAIN CENTER LOCAL
MANAGEMENT ENTITY/ MANAGED
CARE ORGANIZATION, as legally
authorized contractor of and agent for N.C.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Respondent.

SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS ("Settlement Agreement") is entered into as of the effective date, herein by and among Smoky Mountain Center for Mental Health, Developmental Disabilities and Substance Abuse Services, now doing business as Vaya Health, a Local Management Entity/Managed Care Organization, ("Vaya" or "Vaya Health"), for itself and its members of its board of directors, officers, successors, assigns, employees past, present and future, legal counsel, insurers, and agents, and Carolina Outreach, LLC, a North Carolina limited liability company doing business in Buncombe County, North Carolina, ("Carolina Outreach"), for itself and its members, managers, employees past, present and future, insurers, and agents. The foregoing parties are at times hereinafter referred to individually, as a "Party," and collectively, as the "Parties."

RECITALS

A. Vaya is a local management entity/managed care organization ("LME/MCO") as defined in N.C. Gen. Stat. §122C-3(20c). Pursuant to contracts with the North Carolina Department of Health and Human Services ("DHHS"), Vaya is responsible for management and oversight of all publicly funded mental health, intellectual/developmental disabilities and substance use/addiction ("MH/IDD/SA") services for, among others, individuals whose

Medicaid originates from a 23-county catchment area that includes Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes and Yancey counties (the “Catchment Area”).

B. Pursuant to Sections 1915(b) and 1915(c) of the Social Security Act (42 U.S.C. §1396n(b) and (c)), the U.S. Department of Health and Human Services has waived portions of North Carolina’s traditional fee-for-service programs and replaced them with a managed care program (the “1915(b)/(c) Medicaid Waiver”). Vaya operates as a Medicaid Prepaid Inpatient Health Plan (pursuant to 42 C.F.R. § 438.2) on a capitated per member per month basis pursuant to its contract with the DHHS Division of Medical Assistance (“DMA”) (the “DMA Waiver Contract”) and in accordance with the 1915(b)/(c) Medicaid Waiver.

C. Vaya contracts with a limited network of providers (the “Provider Network”) to provide MH/IDD/SA services to eligible Medicaid beneficiaries originating from Vaya’s Catchment Area and/or to eligible enrollees of other federal, state or local monies (“Vaya Health Plan Members”).

D. Carolina Outreach is one of those providers in Vaya’s Provider Network contracted with Vaya to provide MH/IDD/SA services to Vaya Health Plan Members. Carolina Outreach is a provider of mental health and behavioral healthcare services with its principal place of business in Durham, North Carolina and with offices in Asheville, Durham, Raleigh, Clayton, Pittsboro, Fayetteville, Wilson, Goldsboro, Kinston, and Smithfield. The Asheville office primarily serves Vaya Health Plan Members.

E. Under its contracts with DHHS and applicable federal and state laws and regulations, Vaya is responsible for conducting program integrity activities, including identifying and recovering overpayments made by Vaya to providers within Vaya’s Provider Network.

F. Carolina Outreach entered into numerous contracts as a service provider in Vaya’s Provider Network to provide certain services, including but not limited to Diagnostic Assessments, to Vaya Health Plan Members under the 1915(b)/(c) Medicaid Waiver, (collectively the “Provider Contracts”).

G. Vaya conducted a post-payment review, identified as Investigation No. 20150730_OUTREACH_PI, for Medicaid paid claims for services billed by Carolina Outreach for service code T1023 Diagnostic Assessments (the (“PPR”).

H. Vaya issued a Notice of Overpayment dated February 12, 2016 concerning the PPR (the “Notice of Overpayment”), notifying Carolina Outreach of Vaya’s determination that Carolina Outreach had received an overpayment of Medicaid funds in the amount of \$53,427.24 (the “Disputed Overpayment Amount”).

I. Carolina Outreach filed a timely Request for Reconsideration concerning the Notice of Overpayment and Disputed Overpayment Amount to Vaya’s Reconsideration Panel.

J. Following proper notice and an opportunity to be heard at the Reconsideration Review held April 29, 2016, Vaya timely sent Carolina Outreach a Notice of Decision dated May 12, 2016, revising some of the reason codes but upholding the Disputed Overpayment Amount (“Notice of Decision”).

K. During the July 8, 2016 and July 13, 2016 checkwrite periods, Vaya recouped \$63,044.14, which included the Disputed Overpayment Amount, plus interest and penalties for this PPR.

L. Carolina Outreach filed a petition for a contested case hearing (“Petition”) before the North Carolina Office of Administrative Hearings (“OAH”) on July 11, 2016, in a case bearing case file number 16 DHR 07181 (“OAH Contested Case”), against “Smoky Mountain Center Local Management Entity/Managed Care Organization, *as legally authorized contractor of and agent for* N.C. Department of Health and Human Services.” Vaya received the Petition on July 13, 2016.

M. On or about July 15, 2016, Carolina Outreach accepted remittance of \$31,842.55 of the Disputed Overpayment Amount, interest, and penalties previously recouped by Vaya on the two July checkwrites, in exchange for not filing with OAH in the OAH Contested Case a motion or other filing for injunctive relief or remittance of the remaining amount recouped for a certain period of time. The Parties mutually agreed to use the time to negotiate a settlement of the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount and the OAH Contested Case in good faith.

N. Following remittance of \$31,842.55 to Carolina Outreach, Vaya retained \$31,201.59 of the Overpayment Amount.

O. The Parties have negotiated in good faith the claims in dispute successfully and, in order to avoid the uncertainty, time and expense of litigation, desire to and have agreed to resolve any and all matters and things in dispute between and among them arising out of or

relating to the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case, without any further trouble or expenses, on the terms and conditions set forth below in this Settlement Agreement.

NOW, THEREFORE, for and in consideration of the promises and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party hereto, the Parties covenant, represent and agree as follows:

1. ***Incorporation of Recitals***: The Recitals hereinabove of this Settlement Agreement are material provisions of this Settlement Agreement and are hereby incorporated herein by reference as if set forth herein in their entirety.

2. ***Compromise of Disputed Claims***: The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, illegal conduct, nonconformity, error, other deficiency or legal position on the part of any Party. Any such alleged liability, illegal conduct, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

3. ***Settlement Terms***: In full and final satisfaction and settlement of any and all matters and things in dispute by and between the Parties arising out of or relating to the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case, the Parties mutually agree to the following settlement terms:

a. **Settlement Amount**: Carolina Outreach shall pay Vaya a total of Thirty Two Thousand Five Hundred Fifty and 56/100 Dollars (\$32,550.56) (the "Settlement Amount").

b. **Payment of Settlement Amount**: Vaya recouped and retains Thirty One Thousand Two Hundred One and 59/100 Dollars (\$31,201.59) of the Settlement Amount. Carolina Outreach owes and shall pay to Vaya the remaining One Thousand Three Hundred Forty Eight and 77/100 Dollars (\$1,348.77) of the Settlement Amount in one lump sum payment, payable by official bank check or electronic funds transfer, to Vaya Health. Carolina Outreach shall deliver such lump sum payment to Vaya at 200 Ridgefield Court, Suite 206, Asheville, North Carolina 28806 no later than 5:00 p.m. eastern standard time (EST) on November 17, 2016. The Parties understand and acknowledge that Vaya must receive the funds no later than 5:00 p.m. EST on

November 17, 2016. Carolina Outreach owes no interest or penalties as long as it pays the Settlement Amount in accordance with the terms of this Settlement Agreement.

c. Dismissal of OAH Action with Prejudice: Within three (3) business days following delivery to Carolina Outreach of this Settlement Agreement executed by Vaya, Carolina Outreach shall cause to be executed and delivered to OAH a Notice of Voluntary Dismissal with Prejudice of the OAH Contested Case against Vaya in proper form for filing and service. Carolina Outreach hereby directs, and agrees to instruct, its legal counsel, Matthew W. Wolfe of the law firm Parker Poe Adams and Bernstein, LLP to promptly sign any and all documentation necessary to effectuate a dismissal with prejudice of the OAH Contested Case by Carolina Outreach against Vaya.

d. Acceptance by Vaya: Vaya agrees to accept the Settlement Amount on the terms set forth in sub-Paragraph 2a., the Settlement Payment on the terms set forth in sub-Paragraph 2b., and the Dismissal of the OAH Contested Case on the terms set forth in Paragraph 3 above in full and final satisfaction and settlement of the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, and OAH Contested Case. Vaya acknowledges that the Disputed Overpayment Amount was not based upon allegations by Vaya that Alexander engaged in fraud, willful misrepresentation, the filing of a false claim, or other illegal conduct. If Vaya decides to use the Notice of Overpayment, PPR, Notice of Decision, or Alleged Overpayment Amount in any future procurement decision, the Settlement Agreement and the Disputed Overpayment Amount will not be deemed an admission of liability by Carolina Outreach and Carolina Outreach will be permitted to challenge the procurement decision on any legal or factual basis related to this contested case.

4. ***Representations by Carolina Outreach:*** Carolina Outreach represents and warrants, as follows:

a. Carolina Outreach has not transferred, assigned, encumbered or shared rights, interest or title in, to or under the Settlement Agreement and warrants that upon execution of this Settlement Agreement that no other person or entity shall have any of Carolina Outreach's rights in this Settlement Agreement.

b. There is no known appeal, reconsideration, litigation, claim, defense, or dispute against Vaya related to the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case not resolved by this settlement.

5. ***Representations by Vaya:*** Vaya represents and warrants, as follows:

a. Vaya has not transferred, assigned, encumbered or shared rights, interest or title in, to or under the Settlement Agreement.

b. There is no known appeal, reconsideration, litigation, claim, defense, or dispute against Carolina Outreach related to the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case not resolved by this settlement.

6. ***Mutual Release:*** In consideration of the provisions set forth hereinabove and subject to the obligations and promises set forth in this Settlement Agreement, the Parties hereby release, acquit, and discharge each other, and their respective agents, insurers, and assigns; their past, present, and future legal entities and respective successors and assigns; and their respective members of the board of directors, officers, managers, members, employees, attorneys, and agents, whether herein named or referred to or not, of and from any and all actions, causes of action, claims, defenses, demands, liabilities, obligations, damages, costs, attorneys' fees (actual or reasonable), expenses, compensations, and all consequential, punitive, and treble damages of whatsoever kind or nature, whether known or unknown and whether contingent or liquidated, whether at law or in equity, from the beginning of time to and including the effective date of this Settlement Agreement, which arise out of the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case.

7. ***Non-Disparagement Agreement:*** The Parties agree that neither they nor anyone acting on their behalf shall hereafter make any derogatory or disparaging statements about any Party to this Settlement Agreement about the nature or adequacy of any conduct attributable to the Parties arising out of or related to the Notice of Overpayment, PPR, Notice of Decision, Disputed Overpayment Amount, or OAH Contested Case.

8. ***Advice of Legal Counsel:*** The Parties acknowledge that they are entering into this Agreement of their own accord and without coercion or pressure of any kind; that the Parties have sought and obtained or had the opportunity to obtain independent legal advice from counsel of their own selection; that they have been duly apprised of or had the opportunity to be duly apprised of their respective legal rights, whether legal or equitable, and regardless of whether arising under the laws of the State of North Carolina, United States, any territory thereof, or any foreign jurisdiction; that all of the provisions of this Settlement Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; and that they have given due consideration to such provisions and questions and answers and each understands them clearly.

9. ***Confidentiality Agreement:*** Each Party agrees that it will not disclose the terms of this Agreement to anyone (except to its attorneys, accountants, employees or agents who need to know the terms of this Settlement Agreement in order to carry out their job responsibilities, corporate affiliates, parents, and subsidiaries, all of whom agree to abide by the disclosure restrictions set forth in this paragraph), unless disclosure is required by the Provider Contracts, DMA Waiver Contract, or N.C.G.S. Chapter 132 (the NC Public Records law).

10. ***Severability:*** The provisions of this Settlement Agreement are severable. If any provision of this Settlement Agreement is held invalid, illegal, or unenforceable, the remainder of the Settlement Agreement shall remain in full force and effect, provided the essential purposes of the Settlement Agreement are maintained.

11. ***Governing Law:*** The laws of the State of North Carolina shall govern and control the validity, interpretation, performance, and enforcement of this Settlement Agreement, and the proper venue for any dispute arising out of the Settlement Agreement shall be the Superior Court for Buncombe County, North Carolina.

12. ***Entire Agreement:*** This Settlement Agreement constitutes the entire understanding and agreement between and among the Parties hereto with respect to the matters herein and supersedes all prior discussions and written and oral agreements with respect hereto.

13. ***Binding Nature of Settlement Agreement:*** This Settlement Agreement shall be binding upon, and inure to the benefit of, Vaya and Carolina Outreach as each Party is defined herein.

14. ***Amendment:*** The terms of this Settlement Agreement may not be amended, modified, or waived, except by written agreement duly executed by the Parties hereto.

15. ***Attorney's Fees, Costs and Expenses:*** The Parties agree to pay and bear their own attorneys' fees and all other costs and expenses in connection with the dispute described in this Settlement Agreement and in connection with this Settlement Agreement.

16. ***Authority of Representatives:*** The Parties represent and warrant that their undersigned representatives have been, and are, duly, properly, and fully authorized to sign and enter into this Settlement Agreement on their behalf, and that they have not transferred, assigned, or conveyed to any other entity, person, or agency any of the obligations, claims, causes of action, rights, interest, or title which are the subject of this Settlement Agreement.

17. ***Counterparts:*** This Settlement Agreement may be executed, via DocuSign or handwritten signature electronically mailed to legal counsel for the respective Party, in any number of duplicate originals or separate counterparts, all of which together shall constitute one and the same document.

WHEREFORE, each Party has caused this this Settlement Agreement to be executed with its own hand and "Seal," or by and through its duly authorized officer, with proper authority of its respective Board of Directors, or authorized manager, under "Seal," effective as of November 10, 2016 (the effective date). Each Party signing below recognizes and agrees that its signature is signed with the intent that this Settlement Agreement is executed as a sealed instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW

**Carolina Outreach, LLC, a North Carolina
limited liability company**

Vaya Health

DocuSigned by:
By: *Tim Brooks* (Seal)
Timothy Brooks, Member-Manager

Date: 11/15/2016

DocuSigned by:
By: *Brian Ingraham* (Seal)
Brian Ingraham, Chief Executive Officer

Date: 11/15/2016